(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

Date: MAY 10 2013 Office: BALTIMORE FILE: [redacted]

IN RE : Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. Do not file any motion directly with the AAO. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted and the underlying application remains denied.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure a U.S. passport by falsely claiming to be a U.S. citizen. The applicant does not contest the finding, but rather seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse and children.

The district director determined that the applicant was ineligible for a waiver due to his false claim to U.S. citizenship and denied the application accordingly. *See Decision of the District Director* dated May 18, 2007.

On appeal the AAO concurred with the applicant's counsel at the time that because the applicant's false claim to U.S. citizenship had been made prior to September 30, 1996, the date of enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), he was not inadmissible under section 212(a)(6)(C)(ii) of the Act and is eligible to apply for a waiver under section 212(i) of the Act. The AAO further determined that the applicant had established his qualifying relative spouse would experience extreme hardship if she were to relocate abroad to reside with the applicant. In the same decision, however, the AAO found the applicant had not established his spouse would experience extreme hardship if she were to remain in the United States while the applicant resided abroad due to his inadmissibility.

On motion the applicant submits statements from his spouse, his son and himself; medical documentation for the family; financial documentation; school documentation for a son's counseling; and country information for Nigeria. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a

> United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien ....

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g.*, *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *Salcido-Salcido v. INS*, 138 F.3d 1292 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

As noted, the AAO determined the applicant had established his spouse would experience extreme hardship if she were to relocate abroad to reside with the applicant. As such, this criterion will not be re-addressed on motion. In the same decision, the AAO concluded that the applicant had failed to establish that his U.S. citizen spouse would suffer extreme hardship were she to remain in the United States while the applicant relocated abroad due to his inadmissibility. Specifically, the AAO found there was insufficient evidence to show the applicant's spouse would suffer hardship any greater than those hardships ordinarily associated with deportation. The AAO noted that the record did not contain documentation substantiating claimed medical conditions of the applicant's spouse and children, thus the AAO was not in the position to reach a conclusion regarding the severity of a medical condition or the treatment and assistance needed. The AAO also found nothing in the record to suggest the applicant would be unable to find employment in Nigeria to alleviate financial support from his spouse and that the record showed the applicant's spouse has an extensive support network of friends, co-workers, and church in the United States.

The applicant contends he has a close relationship with his spouse and that their three sons need his guidance. He states that he and his spouse have medical conditions requiring close attention, and she suffers from hyperthyroidism requiring regular monitoring and migraine headaches for which she once sought treatment in an emergency room. The applicant contends his departure will have an economic, psychological, and medical impact on the family and disrupt educational opportunities. He contends they have a mortgage and other day to day expenses while preparing the children for college. The applicant asserts the youngest son struggles with school and has negative influences that led to suspension from school, thus needing the applicant's presence during counseling. The applicant also states that for someone with family in the United States Nigeria is dangerous because of crime and violence perpetrated by religious fundamentalists.

The applicant's spouse states she and her children need the applicant for the family to be safe and secure. She states the children need their father for responsibilities that she alone and society cannot

fulfill. She states the applicant works closely with school staff to help their youngest son who was arrested and suspended from school and she fears for him without the applicant. She states that as she has divorced once, having two other children from that marriage, she knows the challenges of separation on the family. She states she has hyperthyroidism that is life-threatening and fears anxiety exacerbates it and could lead to depression. She states the family needs the applicant's income to maintain their home and prepare the first son for college. Due to the political and economic situation in Nigeria she fears for the applicant if he returns there. She fears he will be unable to find employment and could be a target of criminals as he comes from the United States. She states that she worries because of the applicant's health if he returns to Nigeria as he requires treatment and prescribed medications, but would have limited resources there to maintain his current standard of living and health.

A letter from the physician for the applicant and his spouse states that the spouse has hyperthyroidism, an over active thyroid gland. He states that symptoms include anxiety, weight loss, irregular heartbeat, chest pain, fatigue, nervousness and depression. He noted the condition is under medical control and does not require surgery, but physical or emotional stress could lead to depression, coma, or death. The physician states the applicant's spouse is in good health, but suggests resolution of the applicant's case in the overall interest of the family, and states the spouse's condition is permanent. The AAO notes that a letter dated March 2012 submitted with the motion is identical in content to a 2009 letter from the same physician as it describes the applicant's spouse's condition and provides no further detail concerning her current medical condition. The record also contains a 2007 evaluation from a psychiatrist that states separation would have a traumatic and destabilizing on the family, but no further detail or updated documentation concerning the potential emotional effects of separation from the applicant.

The AAO finds that the applicant has failed to establish that his qualifying spouse will suffer extreme hardship as a consequence of being separated from the applicant. The applicant and spouse state the applicant is needed for emotional support of the family and specifically to help the youngest son. As the applicant's son is not a qualifying relative hardship to the son is not separately considered, except as it may affect the applicant's spouse. In this case, given the support network the spouse has in the United States and that the son is obtaining counseling, the AAO finds the separation of the spouse from the applicant does not rise to the level of extreme hardship. The applicant's spouse also states she has health problems. Although the record establishes the spouse suffers a permanent health condition, documentation shows it is under control with medication and does not support that the spouse's treatment is dependent on the applicant being physically present in the United States. The AAO finds that the record does not establish the emotional hardships of the applicant's spouse are outside the ordinary consequences of removal.

The applicant and his spouse state the spouse will suffer financial hardship if the applicant returns to Nigeria. The applicant submitted a mortgage statement, but no additional documentation to establish the spouse's current income, expenses, assets, and liabilities or her overall financial situation, or the applicant's contribution, to establish that without the applicant's physical presence in the United States the applicant's spouse will experience financial hardship. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be

considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986). Further, it has not been established that, given the applicant's qualifications, he would be unable to support himself while in Nigeria.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation and the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige,* 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his qualifying spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The motion is granted but the underlying application remains denied.